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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6284 OF 2007

Shri Arun Namdev Pawar ...Petitioner

v/s.

SECRETARY/CHAIRMAN
Rashtriya Seva Parishad & 2 others ...Respondents

Mr. Chandrakant Badgujar i/b. V.V.Gangurde for the Petitioner

Mr. Rajesh Parab h/f M/s. C.K.Thomas & Associates

CORAM : B.H.MARLAPALLE,J.
DATED : 20th November, 2007

P.C.

Heard learned Counsel for the Petitioner who was working as a Peon in the respondent no.2 School run by the respondent no.1 Society and is aggrieved by the decision of the School Tribunal dismissing his appeal registered as Appeal no. 1/2006 vide judgement and order dated 12-10-2006.

2. It was the case of the respondent nos. 1 and 2 that the Petitioner was on duty as a Peon on 9-11-2004 and an amount of Rs. 48,000/- was stolen from the cupboard in the school office. He was subjected to search and an amount of Rs. 28,010/- was recovered in

the said search carried out in presence of witnesses. He was,therefore, placed under suspension and was subsequently issued the chargesheet dated 7-12-2005, when the management realised the petitioner refused to pay the remaining amount of Rs. 19,990/-. A departmental enquiry was initiated against the petitioner as his reply to the chargesheet was not found satisfactory. Initially, the enquiry committee constuted was of four members but having realised the provisions of Rule 36 of the MEPS Rules, 1981, the 4th member withdrew himself and the committee of 3 members continued with the enquiry against the petitioner.

3. In the enquiry conducted by the enquiry committee, the petitioner examined four witnesses whose statements were before the School Tribunal at page nos. 88,90,91 and 93. One of the witness examined in his defence by the Petitioner stated that there was theft of Rs. 48,000/- from the school office on 9-11-2004 while the petitioner was on duty and the amount of Rs. 28,010/- was recovered from the petitioner in presence of Mr. Pramod kumar Mishra and other witnesses. Mr. Mishra was examined as a witness in defence of the Petitioner and he admitted that the said amount was recovered from the Petitioner. The Tribunal, therefore, held that this was the only case where the defence witnesses themselves proved the charge against the delinquent.

4. On the point of constitution of committee, I do not find any breach that the provisions of Rule 36 of the MEPS Rules have been in any way violated, more so, when the 4th member withdrew himself at the intial stage itself. The enquiry was conducted in keeping with the principles of natural justice and there was full opportunity provided to the petitioner to cross examine the witnesses of management and to examine witnesses in his defence. After receiving the report of the enquiry, the punishment order terminating the petitioner from service was passed on 8-6-2006 which was the subject matter of challenge before the School Tribunal. The misconduct of theft by a watchman on duty is a very grave misconduct and the School Tribunal rightly considered that the concept of "proof beyond reasonable doubt" would not be applicable to the domestic enquiries. Neverthless, as noted earlier, in the instant case the defence witnesses themselves admitted that an amount of Rs. 28,010/- was recovered from the petitioner himself in the search carried out in presence of Mr. Pramod kumar Mishra and other witnesses. The Petitioner had claimed some element of bias as he belongs to maratha community and this also has been considered and rejected by the School Tribunal.

5. I am, therefore, satisfied that the view taken by the School Tribunal cannot be termed as perverse or grossly erroneous so as to call for interference under Article 227 of the Constitution of India. The Petition is rejected.

[B.H.MARLAPALLE,J.]